

(f) The decision to deny a trustee's claim of actual, necessary expenses shall take effect upon the expiration of a trustee's time to seek review from the Director or, if the trustee timely seeks such review, upon the issuance of a final decision by the Director.

(g) The trustee's request for review shall be in writing and shall fully describe why the trustee disagrees with the United States Trustee's decision, and shall be accompanied by all documents and materials the trustee wants the Director to consider in reviewing the United States Trustee's decision. The trustee shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the next business day. In order to be timely, a request for review shall be received at the Office of the Director no later than 21 calendar days from the date of the notice to the trustee or the date the expenses were deemed denied. The trustee shall also send a copy of the request for review to the United States Trustee by overnight courier, for delivery the next business day.

(h) The United States Trustee shall have 21 calendar days from the date of the trustee's request for review to submit to the Director a written response regarding the matters raised in the trustee's request for review. The United States Trustee shall provide a copy of this response to the trustee by overnight courier, for delivery the next business day.

(i) The Director may seek additional non-privileged information from any party, in the manner and to the extent the Director deems appropriate.

(j) In reviewing the decision to deny a trustee's claim of actual, necessary expenses, the Director shall determine:

(1) Whether the decision is supported by the record; and

(2) Whether the decision constitutes an appropriate exercise of discretion.

(k) The Director shall issue a final decision no later than 90 calendar days from the receipt of the trustee's request for review, or, if the Director has requested additional information, 30 calendar days from submission of the additional information, unless the trustee agrees to a longer period of

time. The Director's final decision on the trustee's request for review shall constitute final agency action.

(l) In reaching a final decision the Director may specify a person to act as a reviewing official. The reviewing official may not be under the supervision of the United States Trustee who denied the trustee's claim of actual, necessary expenses. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(m) This rule does not authorize a trustee to seek review of any decision to change maximum annual compensation, to decrease or increase appointments of trustees in a region or district, to change the trustee's percentage fee, or to suspend, terminate, or remove a trustee.

(n) A trustee must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

[76 FR 31223, May 31, 2011]

§ 58.12 Definitions.

(a) The following definitions apply to §§ 58.12 through and including 58.24 of this Part and the applications and other materials agencies submit in an effort to establish they meet the requirements necessary to become an approved nonprofit budget and credit counseling agency.

(b) These terms shall have these meanings: (1) The term "accreditation" means the recognition or endorsement that an accrediting organization bestows upon an agency because the accrediting organization has determined the agency meets or exceeds all the accrediting organization's standards;

(2) The term "accrediting organization" means either an entity that provides accreditation to agencies or provides certification to counselors, provided, however, that an accrediting organization shall:

(i) Not be an agency or affiliate of any agency; and

(ii) Be deemed acceptable by the United States Trustee;

(3) The term “adequate counseling” means the actual receipt by a client from an approved agency of all counseling services, and all other applicable services, rights, and protections specified in:

(i) 11 U.S.C. 109(h);

(ii) 11 U.S.C. 111; and

(iii) This part;

(4) The term “affiliate of an agency” includes:

(i) Every entity that is an affiliate of the agency, as the term “affiliate” is defined in 11 U.S.C. 101(2), except that the word “agency” shall be substituted for the word “debtor” in 11 U.S.C. 101(2);

(ii) Each of an agency’s officers and each of an agency’s directors; and

(iii) Every relative of an agency’s officers and every relative of an agency’s directors;

(5) The term “agency” and the term “budget and credit counseling agency” shall each mean a nonprofit organization that is applying under this part for United States Trustee approval to be included on a publicly available list in one or more United States district courts, as authorized by 11 U.S.C. 111(a)(1), and shall also mean, whenever appropriate, an approved agency;

(6) The term “application” means the application and related forms, including appendices, approved by the Office of Management and Budget as form EOUST-CC1, *Application for Approval as a Nonprofit Budget and Credit Counseling Agency*, as it shall be amended from time to time;

(7) The term “approved agency” means an agency currently approved by a United States Trustee under 11 U.S.C. 111 as an approved nonprofit budget and credit counseling agency eligible to be included on one or more lists maintained under 11 U.S.C. 111(a)(1);

(8) The term “approved list” means the list of agencies currently approved by a United States Trustee under 11 U.S.C. 111, as currently published on the United States Trustee Program’s Internet site, which is located on the United States Department of Justice’s Internet site;

(9) The term “audited financial statements” means financial reports audited by independent certified public accountants in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants;

(10) The term “certificate” means the certificate identified in 11 U.S.C. 521(b)(1) that an approved agency shall provide to a client after the client completes counseling services;

(11) The term “client” means an individual who both seeks and receives (or sought and received) counseling services from an approved agency;

(12) The term “counseling services” means all counseling required by 11 U.S.C. 109(h) and 111, and this part including, without limitation, services that are typically of at least 60 minutes in duration and that shall at a minimum include:

(i) Performing on behalf of, and providing to, each client a written analysis of that client’s current financial condition, which analysis shall include a budget analysis, consideration of all alternatives to resolve a client’s credit problems, discussion of the factors that caused such financial condition, and identification of all methods by which the client can develop a plan to respond to the financial problems without incurring negative amortization of debt; and

(ii) Providing each client the opportunity to have the agency negotiate an alternative payment schedule with regard to each unsecured consumer debt under terms as set forth in 11 U.S.C. 502(k) or, if the client accepts this option and the agency is unable to provide this service, the agency shall refer the client to another approved agency in the appropriate federal judicial district that provides it;

(13) The term “counselor certification” means certification of a counselor by an accrediting organization because the accrediting organization has determined the counselor meets or exceeds all the accrediting organization’s standards for counseling services or related areas, such as personal finance, budgeting, or credit or debt management;

(14) The term “criminal background check” means a report generated by a

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state law enforcement authority disclosing the entire state criminal history record, if any, of the counselor for whom the criminal background check is sought, for every state where the counselor has resided or worked during any part of the immediately preceding five years. If a criminal background check is not available for, or is not authorized by state law in, each of the states where the counselor has resided or worked during any part of the immediately preceding five years, the agency shall instead obtain at least every five years a sworn statement from each counselor attesting to whether the counselor has been convicted of a felony, or a crime involving fraud, dishonesty, or false statements;

(15) The term “debt repayment plan” means any written document suggested, drafted, or reviewed by an approved agency that either proposes or implements any mechanism by which a client would make payments to any creditor or creditors if, during the time any such payments are being made, that creditor or those creditors would forbear from collecting or otherwise enforcing their claim or claims against the client; provided, however, that any such written document shall not constitute a debt repayment plan if the client would incur a negative amortization of debt under it;

(16) The term “Director” means the person designated or acting as the Director of the Executive Office for United States Trustees;

(17) The term “entity” shall have the meaning given that term in 11 U.S.C. 101(15);

(18) The term “fair share” means payments by a creditor to an approved agency for administering a debt repayment plan;

(19) The terms “fee” and “fee policy” each mean the aggregate of all fees, contributions, and payments an approved agency charges clients for providing counseling services; “fee policy” shall also mean the objective criteria the agency uses in determining whether to waive or reduce any fee, contribution, or payment;

(20) The term “final decision” means the written determination issued by the Director based upon the review of the United States Trustee’s decision ei-

ther to deny an agency’s application or to remove an agency from the approved list;

(21) The term “financial benefit” means any interest equated with money or its equivalent, including, but not limited to, stocks, bonds, other investments, income, goods, services, or receivables;

(22) The term “governmental unit” shall have the meaning given that term in 11 U.S.C. 101(27);

(23) The term “independent contractor” means a person or entity who provides any goods or services to an approved agency other than as an employee and as to whom the approved agency does not:

(i) Direct or control the means or methods of delivery of the goods or services being provided;

(ii) Make financial decisions concerning the business aspects of the goods or services being provided; and

(iii) Have any common employees;

(24) The term “languages offered” means every language other than English in which an approved agency provides counseling services;

(25) The term “legal advice” shall have the meaning given that term in 11 U.S.C. 110(e)(2);

(26) The term “limited English proficiency” refers to individuals who:

(i) Do not speak English as their primary language; and

(ii) Have a limited ability to read, write, speak, or understand English;

(27) The term “material change” means, alternatively, any change:

(i) In the name, structure, principal contact, management, counselors, physical location, counseling services, fee policy, language services, or method of delivery of an approved agency; or

(ii) That renders inapplicable, inaccurate, incomplete, or misleading any statement an agency or approved agency previously made:

(A) In its application or related materials; or

(B) To the United States Trustee;

(28) The term “method of delivery” means one or more of the three methods by which an approved agency can provide some component of counseling services to its clients, including:

(i) “In person” delivery, which applies when a client primarily receives counseling services at a physical location with a credit counselor physically present in that location, and with the credit counselor providing oral and/or written communication to the client at the facility;

(ii) “Telephone” delivery, which applies when a client primarily receives counseling services by telephone; and

(iii) “Internet” delivery, which applies when a client primarily receives counseling services through an Internet Web site;

(29) The term “nonprofit” means, alternatively:

(i) An entity validly organized as a not-for-profit entity under applicable state or federal law, if that entity operates as a not-for-profit entity in full compliance with all applicable state and federal laws; or

(ii) A qualifying governmental unit;

(30) The term “notice” in § 58.24 means the written communication from the United States Trustee to an agency that its application to become an approved agency has been denied or to an approved agency that it is being removed from the approved list;

(31) The term “potential client” means an individual who seeks, but does not receive, counseling services from an approved agency.

(32) The term “qualifying governmental unit” means any governmental unit that, were it not a governmental unit, would qualify for tax-exempt status under 26 U.S.C. 501(c)(3), or would qualify as a nonprofit entity under applicable state law;

(33) The term “referral fees” means money or any other valuable consideration paid or transferred between an approved agency and another entity in return for that entity, directly or indirectly, identifying, referring, securing, or in any other way encouraging any client or potential client to receive counseling services from the approved agency; provided, however, that “referral fees” shall not include fees paid to the agency under a fair share agreement;

(34) The term “relative” shall have the meaning given that term in 11 U.S.C. 101(45);

(35) The term “request for review” means the written communication from an agency to the Director seeking review of the United States Trustee’s decision either to deny the agency’s application or to remove the agency from the approved list;

(36) The term “state” means state, commonwealth, district, or territory of the United States;

(37) The term “tax waiver” means a document sufficient to permit the Internal Revenue Service to release directly to the United States Trustee information about an agency;

(38) The term “trust account” means an account with a federally insured depository institution that is separated and segregated from operating accounts, which an approved agency shall maintain in its fiduciary capacity for the purpose of receiving and holding client funds entrusted to the approved agency; and

(39) The term “United States Trustee” means, alternatively:

(i) The Executive Office for United States Trustees;

(ii) A United States Trustee appointed under 28 U.S.C. 581;

(iii) A person acting as a United States Trustee;

(iv) An employee of a United States Trustee; or

(v) Any other entity authorized by the Attorney General to act on behalf of the United States under this part.

[78 FR 16150, Mar. 14, 2013]

§ 58.13 Procedures all agencies shall follow when applying to become approved agencies.

(a) An agency applying to become an approved agency shall obtain an application, including appendices, from the United States Trustee.

(b) The agency shall complete the application, including its appendices, and attach the required supporting documents requested in the application.

(c) The agency shall submit the original of the completed application, including completed appendices and the required supporting documents, to the United States Trustee at the address specified on the application form.